IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 1ST FEBRUARY 2008 / 12TH MAGHA 1929

OP.No. 1776 of 2003(J)

PETITIONER:

NIRMALA LADIES HOSTEL,
REPRESENTED BY ITS WARDEN, ADORATION
CONGREGATION, THODUPUZHA.

BY ADV. SRI.J.JULIAN XAVIER
SRI.RAJESH THOMAS

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
LOCAL ADMINISTRATION, GOVT. OF KERALA,
THIRUVANANTHAPURAM.

2. THASILDAR (ASSESSING AUTHORITY),
THODUPUZHA.

BY GOVERNMENT PLEADER SRI. K.P. PRADEEP

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/02/2008, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP3176 OF 2003 IN OP 1776 OF 2003

DISMISSED

1.2.2008 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF REPRESENTATION DATED 12.1.2002 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXT.P2 TRUE COPY OF THE ORDER OF ASSESSMENT DATED 29.11.2001 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.

EXT.P3 TRUE COPY OF THE JUDGMENT DATED 31.1.2002 IN OP 3509 OF 2002

EXT.P4 TRUE COPY OF THE ORDER DATED 12.11.2002 PASSED BY THE FIRST RESPONDENT.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N. RAMACHANDRAN NAIR, J.

O.P. NO. 1776 OF 2003

Dated this the 1st day of February, 2008

JUDGMENT

Petitioner, a convent, is challenging Ext.P4 order whereunder the Government has declined building tax exemption for the hostel building on the ground that hostel building does not qualify for exemption under the head "education purpose".

2. The admitted facts are that the same convent which owns the hostel has two schools, one is a public school and the other is an English medium School for girl students and the hostel building essentially provides residential accommodation for the students from these two schools. However, on account of additional facilities available, the convent is providing accommodation for girl students from nearby schools. Counsel for the petitioner submitted that all students are charged same fees, which is currently Rs. 1200/- per month which includes, charges towards rent, food, electricity and water charges. While the petitioner has referred to the decision of this Court in PRINCIPAL, ST. THOMAS COLLEGE's case, (1999) 1 K.L.T. 815

and contended that hostel run on chargeable basis is also entitled to building tax exemption as running of a hostel for students is educational purpose, Government Pleader argued that running of hostel is not an educational purpose and in any case since hostel is run on chargeable basis, it is not entitled to exemption under Section 3(1)(b) of the Kerala Building Tax Act. In support of his contentions, Government Pleader relied on the decision of this Court in DEVAMATHA's case (2002) 1 K.L.T. 397, wherein this Court held that quarters given for accommodation of doctors are not entitled to building tax exemption.

3. Section 3(1)(b) of the Act provides for exemption from building tax for "buildings used principally for religious, charitable or educational purposes or as factories or workshops". It is clear from the above that exemption has to be considered with reference to principal use of the building and if the building is principally used for any of the purposes referred to in the Section such building is entitled to exemption. Religion, charity and education are distinct and separate heads and one does not qualify the other. In other words, in order to qualify for exemption for building used for educational purpose, education need not be run on charity or free of cost. Since education

forms a separate and distinct head, charging of fees from students by educational institutions for imparting learning does not disqualify an educational institution from tax exemption. Hostel accommodation for students provided by educational institutions is for educational purpose. In fact, large number of educational institutions require students to reside in the hostels provided by them, and such institutions are called residential schools and colleges. Since hostel building owned by educational institution qualifies for exemption, the question to be considered is whether charging of fees on the students for residing in the hostel disentitles the building from building tax exemption. This Court has even held that a parallel college building is entitled to building tax exemption, even though college may be run for earning profit.

4. Admittedly petitioner herein has two educational institutions and it is stated that the students accommodated in the hostel building are mostly from the said schools. If that be so, principal use is for accommodating students from the educational institutions owned by the same management and so much so such building qualifies for exemption as the principal purpose is to accommodate students. It is reported that besides students from the petitioner's own institutions,

students from the other local schools are provided accommodation in the hostel. Counsel for the petitioner contended that even from such students the same fees is charged. Since the hostel run by educational institutions for accommodating their students qualify for building tax exemption, such exemption is not list merely because some students from some other school are also accommodated in the same hostel building. This is because principal use of the building is to accommodate students from the schools of the same management which owns the hostel building. In other words, if majority of the inmates accommodated in the hostel building are students of the schools owned by the same management which owns and runs the hostel, then hostel building is entitled to exemption. In this view of the matter, petitioner is entitled to exemption from building tax for the hostel building. However, on enquiry, if Tahsildar finds that majority of the students accommodated in the hostel building do not belong to schools of the petitioner, then petitioner is not entitled to tax exemption as the hostel run therein is for commercial purpose.

5. Government Pleader pointed out that charges levied in the petitioner's hostel are high when compared to hostel run for girl students. No distinction is seen made in Section 3(1)(b) of the Act in

regard to exemption for building tax. There are ever so many schools and colleges where fees charged are quite high and same is the position for hostels. The beneficiaries are also of different classes. However, so long as statute does not make any distinction providing for tax exemption only for hostel building accommodating poor students or students from low income group, there is no justification for denying building tax exemption to a school or college or hostel where charges levied are high. In the circumstances, this distinction does not justify denial of building tax exemption. It is for the Legislature to take note of the ground realities and restructure the statute providing for tax at least for those who can afford to pay.

Consequently O.P. is allowed quashing the Government order and the assessment and demand of tax for petoitioner's hostel building.

(C.N. RAMACHANDRAN NAIR)
Judge

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